

### **REMARKS**

Claims 1-8, 13-19, 45-47, and 51-55 are pending in the present application. Claims 9-12 and 20-44 have been cancelled due to the restriction requirement. Applicants expressly reserve the right to file continuing applications directed to the cancelled subject matter. Reconsideration and withdrawal of the rejections are respectfully requested in view of the following remarks.

#### **The Double Patenting Rejection**

Claims 1-8, 13-19, 45-47, 51-53, and 55 remain rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17, 19-45, 52-61, and 93-113 of co-pending Application No. 10/523,117. Applicants note that this rejection should properly be a provisional one, as the co-pending application has not yet been deemed in condition for allowance. Applicants will address the rejection at such time as the claims of Application No. 10/523,117 are deemed allowable and the rejection of the present application becomes non-provisional.

#### **The Rejection under 35 U.S.C. §102(b) Should be Withdrawn**

In the Advisory Action mailed February 18, 2010, the rejection of claims 1-8, 13-19, 45-47, and 51-55 remain rejected under 35 U.S.C. §102(b) as being anticipated by PCT Publication No. WO 2001/009350 (Berthet *et al.*). Applicants respectfully traverse this rejection on the grounds outlined below.

As noted in the response mailed January 20, 2010, Berthet *et al.* teach a bleb preparation having one or more upregulated genes selected from a list of 21 antigens, including Hsf-like and TbpA and Tbp. Thus, the reference teaches a genus of many possible antigen combinations, including 210 distinct combinations of two different antigens but does not list the particular combination of an Hsf-like antigen and a TbpA or TbpB antigen. Accordingly, the reference does not teach all the limitations recited in claim 1 or dependent claims 2-8, 13-19, 45-47, and 51-55.

The Examiner argues that the Applicants' arguments are not sufficient to overcome the rejection because the claims encompass compositions having components in addition to the Hsf-like antigen and a TbpA or TbpB antigen. The Applicants agree with the Examiner's construction of the claim. However, even when

construed to encompass additional components, the immunogenic composition of claim 1 and its dependent claims is not anticipated by Berthet *et al.* because the reference fails to teach the combination of an Hsf-like antigen and a TbpA or TbpB antigen with sufficient specificity to anticipate the claimed subject matter. Accordingly, no *prima facie* case of anticipation has been established.

In view of the above arguments, all grounds for rejection under 35 U.S.C. §102(b) have been overcome. Reconsideration and withdrawal of the rejection are respectfully requested.

### **CONCLUSION**

Applicants believe the present claims are in condition for allowance and such action is respectfully requested. Applicants believe that no other fees are due in connection with the filing of this paper other than those specifically authorized herewith.

Should any other fees be deemed necessary to effect the timely filing of this paper, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 07-1392. If the Examiner has any outstanding issues with the pending claims, she is encouraged to telephone the undersigned at (919) 483-1467 for expeditious handling.

Respectfully submitted,

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